Lane was merely colorable."

The court holds, however, that the property turned in to the International company was greater than the stock issued for it and that the case involves no question of overcapitalization.

The court cites portions of the decisions in the cases of the Standard Oil Co., the American Tobacco Co., the Du-Pont De Nemours & Co., and other cases as to what constitutes the restraint of trade, reasonable and unreasonable, and concludes:

"We think it may be laid down as a general rule that if companies could not make a legal contract as to prices or as to collateral services, they could not legally unite, and as the companies named did in effect unite, the sole question is as to whether they could have agreed on prices, and what collateral services they would render when their companies were all prosperous, and they jointly controlled 80 to 85 per cent of the business in that line in the United States. We think they could not have made such an agreement.

"If the five companies which formed the International had been small and their combination had been essential to enable them to compete with larger corporations in the same line, then their uniting would, in the light of reason, not have been in restraint of trade, but in the furtherance of it; but when they constituted the largest manufacturers of their articles in America, if not in the world, and held jointly about 80 to 85 per cent of the trade, and two at least of the companies forming the combination were prosperous, their combining was, when similarly viewed, an unreasonable restraint of trade. If the business of the separate companies combining was unsuccessful it could be plain that their combination was reasonable in view of the rule of reason as proclaimed by the supreme court, but it is conceded that the McCormick and the Deering companies 'had established reasonably successful and prosperous businesses,' so that question is eliminated.

"There is no limit under the American law to which a business may not independently grow, and even a combination of two or more businesses if it does not unreasonably restrain trade is not illegal; but it is the combination which unreasonably restrains trade that is illegal, and if the parties in controversy have 80 or 85 per cent of the American business, and by the combination of the companies all competition is eliminated between the constituent parts of the combination, then it is in restraint of trade within the meaning of the statutes under all of the decisions."

The decision reviews the history of the manufacture of harvesting implements in the United States, asserting that prior to the organization of the International Harvester company the principal manufacturers of harvesting implements in the United States were:

The McCormick Harvesting Machine Co., of Chicago, founded in about 1849.

D. M. Osborne & Co., of Auburn, N. Y., founded about 1860.

The Warder, Bushnell & Glessner Co., of Springfield, O., founded about 1869.

The Deering Harvester Co., of Chicago, founded about 1875.

The Milwaukee Harvester Co., of Milwaukee.

The Plano Manufacturing Co., of West Pullman, Ill.

According to the decision, the efforts to combine these concerns began on June 24, 1902, when T. D. Middlekauff secured an option on the stock and plant of the Milwaukee Harvester Co. for $3,123,691. "He did this," the decision says, "in fact as agent, though it does not clearly appear who his principal was, whether J. P. Morgan & Co., George W. Perkins or the McCormick Harvesting Machine Co. He did it, however, at the direct instance of the McCormick Harvesting Machine Co., but whether he was acting as principal or agent is left in some slight doubt.

"On June 25, 1902, Mr. Middlekauff went to New York with a letter from an officer of the McCormick Co., authorizing him to assign his option to J. P. Morgan & Co., of which George W. Perkins was a member, or to anyone they might designate, and reciting that the option had been obtained 'for us.'

"On August 11, 1902, a new contract was made for the purchase of the Milwaukee Harvester plant by Mr. Middlekauff, and on the same day he assigned his contract to Mr. William C. Lane, a New York banker, and then president of the Standard Trust company.

"In July, 1902, the representatives of the McCormick, Deering, Wardner, Bushnell and Glessner and the Plano companies were all in New York, but stopping at different hotels, and not seeing one another. They were all seeing, however, Mr. George W. Perkins.

"On July 28, 1902, they met and gave separate contracts to William C. Lane to sell all their tangible property, and specified portions of their bills receivable. These agreements all contained a recital that the purchaser, upon his acquisition of the property, intended to transfer the same to a corporation to be organized under the laws of Illinois or some of the states, called the Purchasing company. It was in each case, except that of the Warder, Bushnell & Glessner Co., stipulated that the entire purchase price be paid and fully paid non-assessable stock of the purchasing company.

"On August 11, 1902, the companies all signed an agreement for the immediate delivery of their plants and property without waiting for any appraisement theretofore stipulated for in each instance.

"On August 12, 1902, the very day of the organization of the International Harvester company with a total capitalization of $120,000,000, Mr. Lane appeared before the board of directors and offered to sell the Milwaukee Harvester company plant as a going concern, including its bills receivable, and the plants of the McCormick Harvesting Machine Co., the Deering Harvester Co., the Plano Manufacturing Co., and the Warder, Bushnell & Glessner Co., and to furnish $60,000,000 of working capital to be represented by accounts and bills receivable of the McCormick Harvesting Machine Co., the Deering Harvester Co. and the Plano Manufacturing Co., or in cash, for $120,000,000 of the capital stock of the company, and on August 12, 1902, this proposition was accepted. The property turned in was of greater value than the stock issued for it. This case, therefore, involves no question of overcapitalization. * * *

"In all Mr. Lane did in this matter he was acting upon the suggestion of his counsel. He was compensated, but there never was any idea upon his part that he owned any of the property. He was a mere conduit, or instrumentality, in the transaction."

Later on the decision says: "This court is clearly of the opinion that the process by which it was made to appear that the properties were sold to Lane were merely colorable."

The opinion recites that after the organization of the International Harvester company the combination acquired all the stock of the Milwaukee Harvester company, as it had already acquired the plant. It reduced the capital of the Milwaukee Harvester company to a million dollars, the court said, and changed the name to the International Harvester Company of America, which was for a considerable time officered by officers of the International Harvester company. A contract was made whereby the International Harvester company contracted to sell its entire output to the International Harvester Company of America, which undertook to resell the same. The court declares that the selling company, in addition to buying the products of the manufacturing company, also bought from outside parties some threshers, wagons, blows, etc., and resold them; but "the dealing in all property not the product of the International company only amounts to about 2½ per cent of its business. All the stock of the America company is still the property of the International company.

The court finds that in January following the consolidation of the five companies the International company acquired the D. M. Osborne & Co. stock and the companies thus combined manufactured a still greater percentage of the harvesting machinery used in the United States and nearly the whole of that exported. The decision continues:

"The five companies except the Milwaukee company all took stock in the new company, and with the exception of the Warder, Bushnell & Glessner Co. took stock for the entire amount turned over by them, and this amounted to $93,489,000 of the $120,000,000 capital of the new company. $6,600,000 of the capital of the new company was paid to J. P. Morgan & Co., of which $3,148,196.66 was for the Milwaukee Harvester company's property and business and $2,451,803.34 was for the services and expenses in connection with the organization of the International company. Thus $100,000,000 of the capital of the new company was clearly covered without any new or additional working capital. By agreement among all the parties who were to receive shares of stock in the International all the stock except enough to qualify directors was vested in voting trustees, namely: George W. Perkins, Cyrus H. McCormick and Charles Deering. These voting trustees were maintained for ten years. * * *

"When D. M. Osborne & Co. purchase was made, while the International bought all the stock it permitted the Osborne company to continue to appear to be independent. It is claimed that this was done to enable the Osborn concern to collect its bills receivable which were not acquired by the International. There was commercial advantage in claiming not to be associated with the International. Many persons were opposed to buying from it, and for two years the Osborne company persistently advertised that it was independent.

"While under the old-time law of Warranty it might be justifiable for the Osborne company to conceal its relations with the International, there can be no excuse for the reaffirmation upon its part that it was independent after it had been acquired by the International. 'The seller may let the buyer cheat himself as he-item, but must not actively assist him in cheating himself.'

"The International had bought all the stock of the Osborne company and it had been transferred to a trustee, and there was in the fact that the Osborn company might better collect its bills receivable no basis to justify the international in making a contract under which the Osborne company would continue to advertise that it was an independent concern when it had in fact been merged with the International. It is safe to say that from January, 1902, the competition of the Osborne company was in name only, and did not exist in fact.

"What has been said of the Osborne purchase is true in principle of purchases made by the International of the Keystone company, the Minnie Harvester company and the Aultman-Miller plant.

"Prior to the consolidation the first five companies were in fierce competition for trade, and especially was this true of the McCormick and Deering companies, and this competition extended not only to price but to build up the foreign trade; second, and numerous free items with machines. The result of the combination was that all this competition at once wholly ceased, except within the limitation of agents' commissions.

"The defendants claim that the objects of the organization were: First, to build u pthe foreign trade; second, by the commination to secure more capital to enable them to continue the battle in the foreign market; third, by erlarging the scope of business so as to include other lines of agricultural implements to make an all-the-year-around business. They also claim that it was not the intention to oppress the domestic market, and that they have not done so.

"It does appear that since the combination the foreign trade has been greatly increased. This trade of all the combining companies was $10,430,000 in 1902, and has grown under the defendants' management to $50,000,000 in 1912. This vast growth is to the credit of the energy and enterprise of the defendants. But the growth of the trade of the companies who formed the combination was at the time of the consolidation very recent, and the trade was rapidly increasing just prior to the combination. With the knowledge that the foreign trade was making such a remarkable growth at the time of the consolidation, whether the separate companies would have increased their business as much as the defendants have done, is a mere matter of speculation on which we can venture no opinion.

"It is claimed that the consolidation brought sixty millions of available cash to the new company with which to expand the foreign trade. This is not true. The government claims that not more than ten millions of new cash was furnished, but in no event did it exceed twenty millions. Forty millions of this so-called working capital was furnished in bills receivable of the old companies, just as available to the old companies as to the new. And sixty millions was issued for the tangible property of the old companies and the expenses of J. P. Morgan & Co. in connection with the organization of the new company and for the Milwaukee company.

"Soon the International began buying and constructing plants to extend its business to the prior one of the manufacture of harvesting machinery to the manufacture of all of the five classes of agricultural implements. * * *

"It is contended by the government that the International used its prior monopoly of the old lines to impose its new lines upon dealers and it includes this among numerous charges of oppression upon purchasers.

"While the evidence shows some instances of attempted oppression of the American trade by the International and the American companies, such cases are sporadic, and in general their treatment of their smaller competitors has been fair and just, and if the International and America companies were not in themselves unlawful there is nothing in the history of the expanding of the lines of manufacture, so as to make an all-

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CRIMINAL CASES AGAINST NEW HAVEN WILL BE PUSHED

Washington, Aug. 12.—Criminal prosecutions under the Sherman law in the New Haven case will not be delayed by the agreement to settle the government's civil suit without a prolonged court fight. No official statement was made today at the department of justice, but it was made clear that the action of the New Haven directors in accepting terms which permit of presenting an agreed decree for dissolution of the merger to the federal court will not stay the plans for criminal proceedings as soon as possible.

The next move will be to bring up the civil case in the federal court in New York City.

The option of the state of Massachusetts on the Boston & Maine stock is not affected by the agreement with the government. The sale of the stock is to be put in the hands of a board of trustees. Officials here point out that the real idea underlying the option is to head off the possibility of the Boston & Maine being sold to other railroad interests, inimical to Boston in particular and Massachusetts in general.

WARBURG MAKES SACRIFICE TO DUTY

As Member of Federal Reserve Board He will Sever all Financial Connections and Become as Caesar's Wife.

Washington, Aug. 12.—Paul M. Warburg's testimony before the senate banking committee made public today, revealed that as a member of the new federal reserve board, he will divest himself of every financial interest, although not required by law to do so.

"I am going to leave Kuhn, Loeb and company and I am going to leave my Hamburg firm," Mr. Warburg told the committee.

"I am going to leave every single corporation with which I am connected. More than that, I am going to leave every educational and philanthropic association with which I have been connected, because I think a man who is on that federal reserve board ought to be like Caesar's wife; he ought to be above suspicion; he ought to be without any entangling alliances."

BIG WARSHIPS TO COME NORTH ON SEPTEMBER 1

Only Smaller Craft to Be Left in Mexican Waters for Patrol Duty; Dreadnaughts No Longer Needed.

Washington, Aug. 12.—All the big ships of the Atlantic battleship fleet will be withdrawn from Vera Cruz and brought north by September 1.

Secretary Daniels announced today it was his intention to leave in Mexican waters only small craft capable of patrol duty, or which might necessarily be ordered across the gulf to Dominican or Haitien waters.

It is the plan to have Rear Admiral Fletcher take command of the fleet at Hampton Roads about September 1, in succession to Rear Admiral Badger, who then retires. At the navy department it was said that the movement had no connection with the European crisis, although it was stated that some of the battleships might be used in safeguarding neutrality.

No Order to Move Troops.

Trinidad, Colo., Aug. 12.—Colonel J. Lockett, commander of the federal troops in the strike district of southern Colorado today announced that he has received no orders from the war department to remove a troop of cavalry to Gunnison county and that the announcement from Denver that troop E now stationed at Sopris had been detailed for service there is erroneous and without authority.

BRYAN'S TWENTY PEACE TREATIES BEFORE THE SENATE

Washington, Aug. 12.—Secretary Bryan's twenty peace treaties which President Wilson has urged for immediate ratification were taken up by the senate today in executive session.

PACKERS DENY PRICE BOOST RESULT OF THE WAR

Morris and Company in Formal Statement Today Seek to Place Responsibility on Local Conditions.

MORE RESOLUTIONS FOR PROBE IN CONGRESS

Washington, Aug. 12.—"Food prices have increased in some instances to the extent of extortion, because of the European war," was the subject of another cost of living resolution introduced today by Representative Howard of Georgia.

The resolution calls on Secretary Redfield for statistics of foods held in cold storage, any attempt at a corner in foodstuffs, and the difference between prices paid to the producer and exacted from the consumer. Attorney General McReynolds was called upon for information as to what investigations his department is making and whether offenses have been discovered which are punishable under the anti-trust laws.

MORRIS COMPANY SEEKS TO DEFEND PRICE BOOST

Chicago, Aug. 12.—Agitation by consumers against high prices had considerable to do with today's decline of 40 to 50 cents per hundred weight in the price of hogs, as compared with yesterday's quotations.

This was admitted today at the stock yards, where it was said threats of a general boycot against all kinds of pork had the effect of cutting off the demand from butchers. In some cases the drop in prices since Monday has been as great as a dollar. Coincident with the boycott threats hog receipts have enlarged greatly.

Likelihood of a widespread abstention from beef and mutton as well as pork also was taken notice of at the stockyards. Today's prices for cattle were down 10 to 15 cents and for sheep and lambs there was an equal decline.

Morris and company, packers, issued a statement today, saying:

"Present prices for fresh meats result from purely local conditions. Unsettled conditions in Europe have no influence."

The statement is accompanied by statistics showing a falling off in receipts. Cut meats at the packing houses also declined and it was stated, that prices are now practically the same as before the war scare. Pork loins were 7 to 9 cents lower than on Monday, ham 5 cents down and spare ribs 2 cents lower.

J. R. Brown of the Drovers' Journal, explained that the previous advance was due to the effect of the war scare on the money situation, which affected hog shipments, rather than to an increased demand for product.

A leading packer today announced the sale of 2,000,000 pounds of canned meats to the French government.

JOE BAILEY SAYS HE WILL RUN FOR SENATE

Texan Declares If El Paso Convention Beats His Resolution Against Nation-Wide Prohibition He will Enter Fight.

El Paso, Tex., Aug. 12.—Former Senator Joseph W. Bailey today announced that he would enter the contest for the United States senatorship in 1916 if the Democratic state convention, in session here, refuses to adopt his resolutions opposing nation-wide prohibition. Mr. Bailey made this statement when he learned of a plan of the majority to oppose the resolutions.

Mr. Bailey said he would make the race if necessary to get the issue before the people of Texas. Adoption of a platform and action on resolutions were expected today.

FORAKER DEFEATED FOR NOMINATION IN OHIO

Columbus, O., Aug. 12.—Former Senator Joseph B. Forraker this morning conceded his defeat for the Republican nomination for United States senator. He telegraphed his congratulations to his successful competitor, Warren G. Harding, of Marion.

Former Congressman Nicholas Longworth was nominated in the first district without opposition on the Republican side.